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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,969	03/21/2007	Anthony Court Huggett	037549-000002	3380

24239 7590 04/17/2017  
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EXAMINER
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BRADEN, SHAWN M

ART UNIT	PAPER NUMBER
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3728

NOTIFICATION DATE	DELIVERY MODE
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04/17/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ANTHONY COURT HUGGETT<sup>1</sup>

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Appeal 2015-001465  
Application 10/569,969  
Technology Center 3700

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Before STEFAN STAICOVICI, WILLIAM A. CAPP, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Anthony Court Huggett (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 20, 22, 24–26, 28–35, and 37–47.<sup>2</sup> We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> According to Appellant, the Real Party in Interest is Compact Crates Limited. Appeal Br. 1 (filed July 3, 2014).

<sup>2</sup> Claims 1–19, 21, 23, 27, and 36 have been cancelled. *Id.* at 10–13 (Claims App.).

### CLAIMED SUBJECT MATTER

The invention concerns a collapsible container. Spec. 1:7–8.

Claim 20 is illustrative of the subject matter on appeal, and recites:

20. A collapsible container comprising:  
a plurality of upper panels, and  
a bottom panel,  
each panel having a body defining a plurality of edges and  
an elongate tubular member along each of the edges of the body;  
*each tubular member having at least one cut-away section  
to form an interlocking formation that is an alternating tenon and  
mortise formation, wherein each cut-away section comprises a  
residual portion of said tubular member, each mortise being  
shaped so that a tenon is received therein in an arrangement  
wherein the received tenon is not concentric with adjacent  
tenons, whereby an engagement member passing through the  
tenons has a secure or friction fit therein;*  
the bottom panel having a plurality of reinforced  
downwardly protruding supports comprised of a plurality of  
panels for raising up the bottom panel and thereby the collapsible  
container; and  
at least one interlocking formation on the bottom panel  
engaging an interlocking formation on at least one upper pane.

Appeal Br. 10 (Claims App.) (emphasis added).

### REJECTIONS

The claims stand rejected as follows:<sup>3</sup>

- I. Claims 20, 22, 24–26, and 29–31 under 35 U.S.C. § 103(a) as unpatentable over Vourganas (US 6,631,821 B2, iss. Oct. 14, 2003) and Dean (US 2002/0073509 A1, pub. June 20, 2002).

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<sup>3</sup> According to the Examiner, the rejection under 35 U.S.C. § 112, second paragraph, was overcome by Appellant's amendments to the claims, which

- II. Claims 28 and 41–44 under 35 U.S.C. § 103(a) as unpatentable over Vourganas, Dean, and Winebarger (US 5,487,345, iss. Jan. 30, 1996).
- III. Claims 32–35, 37–40, and 45–47 under 35 U.S.C. § 103(a) as unpatentable over Vourganas, Dean, and Huggett (WO 02/46048 A2, pub. June 13, 2002).

### ANALYSIS

With respect to independent claim 20, the Examiner finds that Vourganas discloses a collapsible container substantially as claimed including upper panels 41, 42 and bottom panel 40. Final Act. 3. The Examiner finds that each panel has a body with a plurality of edges and “an elongate tubular member (86 see fig. 23-24) along each of the edges of the body,” wherein each tubular member has at least one cut-away section, and wherein each cut-away section comprises a residual portion of tubular material 86. *Id.*; Ans. 2. The Examiner provides an annotated version of Vourganas’s Figure 23, reproduced below, to illustrate the Examiner’s findings. Ans. 3.

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were entered by the Examiner. *See* Adv. Act. (mailed May 9, 2014); Final Act. 2 (mailed Oct. 1, 2014).

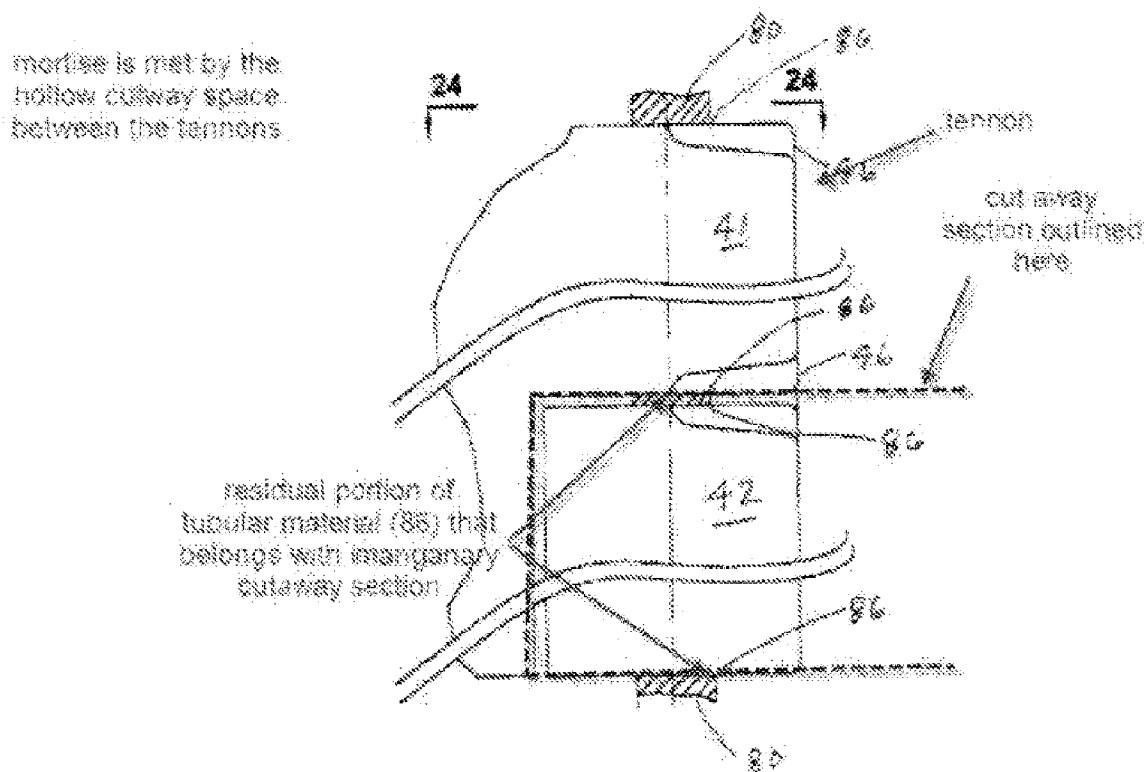


FIG. 23

The Examiner's annotated Figure 23 depicts a corner of Vournagas's container with the side panel 42 and end panel 41 interleaved, and includes the Examiner's identifications of a tenon projecting from panel 41, a cut-away section below the tenon (which the Examiner states is also the claimed mortise), and residual portions of tubular material 86 at the upper and lower edges of the identified cut-away section. *Id.*; Vournagas, 3:65–67. The Examiner explains that element 86 is the claimed tubular member, and “the cutout . . . is the gap or empty space between which has residual portions of (86) on each side of it.” Ans. 2.

Appellant contends, *inter alia*, that Vournagas does not disclose tubular members wherein a “cut-away section comprises a residual portion of said tubular member” as claimed. Appeal Br. 6; Reply Br. 5. Specifically, Appellant contends that “the ordinary meaning of ‘residual

portion’ is a portion that remains,” and Vourganas does not disclose as much. Reply Br. 4 (citing Spec. 9:7–10; Webster’s II New Riverside University Dictionary).

During examination, “claims . . . are to be given their broadest reasonable interpretation consistent with the specification, [ ] and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990) (internal citation and quotations omitted). Therefore, the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). We agree with Appellant that an appropriate definition of “residual,” in the context of the claim language and in light of Appellant’s Specification, is “remaining.” See Spec. 9:7–9 (explaining that mortises are formed by removing portions of the tube section “so that an inner half of the tube section remains”); Merriam-Webster Online Dictionary, “residual,” <https://www.merriam-webster.com/dictionary/residual> (last accessed Apr. 6, 2017) (defining term as “remainder”).

Accordingly, claim 20, as construed by a person of ordinary skill in the art and in light of Appellant’s Specification, requires that each panel include a tubular member, and each tubular member have at least one cut-away section that includes a remaining portion [a “residual portion”] of the tubular member. Appeal Br. 10 (Claims App.). A preponderance of evidence does not support the Examiner’s finding that Vourganas discloses such tubular members. Vourganas discloses a bin including two vertical end panels 41, two vertical side panels 42, and pallet base 40. Vourganas, 4:39–

41, Fig. 1. Each end panel 41 and each side panel 42 defines complimentary segmented horizontal extensions. *Id.* at 4:64–5:2, Figs. 1, 6. At each of the four corners of the bin, the segmented horizontal extensions of one end panel 41 and one side panel 42 are intermeshed and joined by a tubular, vertical corner post 80 that is inserted through the panels. *Id.* at 4:50–53, 7:1–7, 8:47–53, Figs. 6, 8. Vourganas explains that corner posts 80 are inserted from the bottom of pallet base 40 and through holes 86 to join the end and side panels together. *Id.* at 7:1–8, 8:47–53, Figs. 23–24.

The Examiner identifies Vourganas's holes 86 as the claimed "tubular member[s]." Final Act. 3; Ans. 2–3. As an initial matter, we are not persuaded that a hole, which is the absence of structural material, is the claimed tubular member, which requires an affirmative structure. Furthermore, these holes 86 are formed through the segmented horizontal extensions of panels 41 and 42 (identified by the Examiner as the claimed tenons). Ans. 3; Vourganas, Fig. 23. These holes 86 simply terminate at the top and bottom faces of the segmented horizontal extensions, i.e., the tenons. To the extent the vacant area between these extensions is considered a "cut-away section," as the Examiner finds, this section does not "comprise a residual portion of said tubular member" (i.e., a remaining portion of the tubular member), because no structural portion of hole 86 is present in that cut-away section. *See* Ans. 2. As stated above, holes 86 simply terminate flush with the faces of the segmented horizontal extensions. *See* Vourganas, Fig. 23. For this reason, we do not sustain the Examiner's rejection of claim 20, or claims 22, 24–26, and 29–31, which depend therefrom.

The Examiner's reliance on Winebarger, with respect to dependent claims 28 and 42–44, and Huggett, with respect to dependent claims 32–35, 37–40, and 45–47, does not cure the deficiency discussed above. *See* Final Act. 5–8. Accordingly, we also do not sustain the Examiner's rejections of claims 28, 32–35, and 37–47 as unpatentable over Vourganas, Dean, and either of Winebarger or Huggett.

#### DECISION

The Examiner's decision to reject claims 20, 22, 24–26, 28–35, and 37–47 is REVERSED.

REVERSED